

Franchise Tax Board**ANALYSIS OF AMENDED BILL**

Author: Skinner Analyst: William Koch Bill Number: AB 1307
Related Bills: See Legislative History Telephone: 845-4372 Amended Date: June 21, 2011
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: BOE In Cooperation With FTB Implement Financial Institution Record Match System For Collection Of Taxes Or Fees

SUMMARY

This bill would, among other things, require the Board of Equalization (BOE) to operate and implement a Financial Institution Record Match system (FIRM) in cooperation with the Franchise Tax Board (FTB).

This analysis only addresses the above provision and reflects the bill as amended June 21, 2011.

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to provide increased efficiencies for the collection of delinquent debts owed to the BOE.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative on January 1, 2012.

ANALYSIS**STATE LAW**

Current state law, enacted by SB 86 (Senate Comm. on Budget and Fiscal Review, Stats. 2011, Ch. 14) requires the FTB to coordinate with financial institutions doing business in this state to establish FIRM using automated data exchanges to the maximum extent feasible. The FTB is required to promulgate any rules or regulations necessary to implement FIRM. These rules and regulations are required to include the following:

- A structure by which financial institutions or their designated data processing agent receive from the FTB the file or files of delinquent debtors that the institution will match with its own list of accountholders to identify delinquent tax debtor accountholders at that institution.

Board Position:

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- An option by which financial institutions without the technical ability to process the data exchange, or without the ability to employ a third party data processor to process the data exchange to forward to the FTB a list of all accountholders and their Social Security Numbers, or other taxpayer identification numbers so the FTB can match that list with the file or files of delinquent tax debtors.
- Authority for the FTB to exempt a financial institution from the requirements of this provision if the FTB determines that the financial institution's participation would not generate sufficient revenue to be cost effective for the department.
- Authority for the FTB to suspend the requirements of this section temporarily for a financial institution if a financial institution provides the FTB with a written notice from its supervisory banking authority that it is determined to be undercapitalized, significantly undercapitalized, or critically undercapitalized. Any notice provided to the FTB for this purpose is subject to the same confidentiality restrictions that exist for taxpayer or tax return information obtained by the FTB.

Any use of the information obtained under FIRM for any purpose other than the collection of delinquent franchise or income tax or other debts referred to FTB for collection is a violation of existing disclosure restrictions. FIRM contains express authority for the FTB to provide confidential taxpayer data to the financial institutions for purposes of data matching.

On a quarterly basis, FIRM requires financial institutions to provide FTB the name, record address and other addresses, social security number or other taxpayer identification number, and identifying information for each delinquent tax debtor as identified by the FTB who maintains an account at the financial institution. Financial institutions may not disclose to the accountholder, depositor, co-acountholder, or co-depositor that their identifying information has been received or furnished to the FTB, unless required to do so by law.

Under FIRM, a financial institution does not incur liability or obligation for any of the following:

- Furnishing information to the FTB,
- Failing to disclose to a depositor or accountholder that their personal identifying information was included in the data exchange with the FTB, or
- Any other action taken in good faith to comply with the requirements of this provision.

If a financial institution willfully fails to comply with the requirements of the rules promulgated by the FTB, unless that failure is due to reasonable cause satisfactory to the FTB, the financial institution is subject to a penalty upon notice and demand in the amount of \$50 for each debtor's record not provided up to a maximum of \$100,000 in any calendar year.

Under FIRM, the following definitions apply:

(1) "Account" means any demand deposit account, share or share draft account, checking or negotiable withdrawal order account, savings account, time deposit account, or money market mutual fund account, regardless of whether the account bears interest.

(2) "Financial institution" means:

- A depository institution, as defined in Section 1813(c) of Title 12 of the United States Code.
- An institution-affiliated party, as defined in Section 1813(u) of Title 12 of the United States Code.
- Any federal credit union or state credit union, as defined in Section 1752 of Title 12 of the United States Code, including an institution-affiliated party of a credit union, as defined in Section 1786(r) of Title 12 of the United States Code.
- Any benefit association, insurance company, safe deposit company, money-market fund, or similar entity authorized to do business in this state.

(3) "Delinquent tax debtor" means any person liable for any income or franchise tax or other debt referred to the FTB for collection as imposed under Part 5 (commencing with Section 10878), Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 19280), or Part 11 (commencing with Section 23001), including tax, penalties, interest, and fees, where the tax or debt, including the amount, if any, referred to the FTB for collection remains unpaid after 30 days from demand for payment by the FTB, and the person is not making current timely installment payments on the liability under an agreement.

FIRM includes reimbursement by the FTB of one-time start up costs in an amount up to \$2,500 for each financial institution, and provides for reimbursement by FTB for the quarterly data matches conducted in an amount up to \$250 per quarter per financial institution.

The initial size of the FTB data match file sent to financial institutions is limited to no more than 600,000 records and subsequent data match files can increase each quarter by no more than an additional 600,000 records until the full universe of tax debtors is included in the data match file.

The first data exchange under FIRM for purposes of matching tax debtor records to financial institution account holder records can occur no earlier than April 1, 2012.

THIS BILL

This bill would:

- Require the BOE to operate and implement a FIRM in cooperation with the FTB.
- Allow the FTB to disclose BOE's delinquent tax debtor information to financial institutions or their authorized processing agents for the purpose of matching debtor records to accountholder records at the financial institution. Any other use of such data provided by the FTB would be a violation of existing disclosure law under Revenue and Taxation Code Section 19542.
- Define "delinquent tax debtor" as any person liable for any tax, fee, or surcharge amounts, and any penalty, interest, or other amounts required to be paid to the BOE, where the liability remains unpaid after 30 days from demand for payment by the BOE, and the person is not making currently timely installment payments on the liability.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concern. Department staff is available to work with the author's office to resolve this and other concerns that may be identified. The text of the bill would require the BOE to operate and implement a FIRM as described in Revenue and Taxation Code Section 19266 in cooperation with the FTB. If the author's intent is for the BOE to participate in the FIRM program implemented and operated by the FTB, the bill should be amended to provide clarity on this issue.

LEGISLATIVE HISTORY

SB 86 (Senate Comm. on Budget and Fiscal Review, Stats. 2011, Ch. 14) requires the FTB to coordinate with financial institutions doing business in this state to establish FIRM using automated data exchanges to the maximum extent feasible.

FISCAL IMPACT

Assuming the author's intent is for the BOE to participate in the FTB's FIRM, which would require the FTB to combine the BOE's debtor file with FTB's FIRM debtor file, and exchange such file and the resulting matched data file with the BOE, FTB's first year costs would be approximately \$70,000, and ongoing annual costs would be approximately \$30,000.

ECONOMIC IMPACT

Revenue Estimate

This bill would not impact the state's income tax revenue.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Pro: Proponents could state this bill would improve the state's fiscal situation by facilitating the collection of delinquent debts owed to the BOE.

Con: Opponents could state this bill would provide tax agencies access to an unnecessary amount of financial information.

LEGISLATIVE STAFF CONTACT

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